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Field Hotel Associates, L.P. d/b/a Holiday Inn-JFK Airport and Field Family Associates, LLC d/b/a Hampton Inn NY-JFK and New York Hotel & Motel Trades Council, AFL-CIO, Petitioner.
Cases 29-RC-10237 and 29-RC-10238

September 29, 2005

**DECISION AND CERTIFICATION OF
REPRESENTATIVE**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The National Labor Relations Board has considered objections to elections held August 12 and 13, 2004, and the administrative law judge's decision on objections recommending disposition of them. The elections were conducted pursuant to Stipulated Election Agreements. The tally of ballots at Holiday Inn-JFK Airport in Case 29-RC-10237 shows 60 votes for and 52 votes against the Petitioner, with 7 challenged ballots, an insufficient number to affect the results. The tally of ballots at Hampton Inn-JFK Airport in Case 29-RC-10238 shows 20 votes for and 17 votes against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the judge's findings¹ and recommendations,² and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for New York Hotel & Motel Trades Council, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate units:

¹ The Employer has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Employer contends that the judge's rulings, findings, and conclusions demonstrate bias. On careful examination of the judge's decision and the entire record, we are satisfied that the Employer's contention is without merit.

² In the absence of exceptions, we adopt, *pro forma*, the judge's recommendation to overrule the Employer's remaining objections—Objections 2, portions of 3, 4, portions of 5, and 11.

Employer Holiday Inn

All full-time and regular part-time housekeeping and laundry employees, bar, banquet, kitchen, restaurant employees, and maintenance employees employed by the Employer at its Holiday Inn-JFK facility located at 144-02 135th Avenue, Jamaica, New York, but excluding all other employees, including Human Resources Department employees, sales employees, accounting, life-guards, front office employees, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

Employer Hampton Inn

All full-time and regular part-time housekeeping and laundry employees, breakfast bar, and maintenance employees employed by the Employer at its Hampton Inn NY-JFK facility located at 144-10 135th Avenue, Jamaica, New York, but excluding all other employees including sales employees, accounting, front office employees, office clericals, guards and supervisors as defined in Section 2(11) of the Act.

Dated, Washington, D.C. September 29, 2005

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Andrew S. Hoffmann, Esq., counsel for the Employer.

Jane Lauer-Barker, Esq., counsel for the Union.

DECISION ON OBJECTIONS

RAYMOND P. GREEN, Administrative Law Judge. I heard this case on April 19, 20, 22, and May 5, 2005.

An original petition in 29-RC-10220 was filed by the New York Hotel and Motel Trades Council, AFL-CIO on May 28, 2004 seeking an election in a unit comprising the employees of the Holiday Inn and the Hampton Inn at JFK Airport. A hearing on that petition was scheduled for June 15, 2004, but the Union and the Employer agreed that even though the two companies were commonly owned, there would be two separate voting units, one for each hotel. Accordingly, it was agreed that the Union would file two new petitions and withdraw the petition in 29-RC-10220.

The Petitions in 29-RC-10237 and 29-RC-10238 were filed on July 1, 2004. Pursuant to Stipulated Election Agreements,

elections were held in two separate units; at the Holiday Inn on August 12, 2004 and at the Hampton Inn on August 13, 2004.

The tally of ballots for the Holiday Inn showed that there were 60 votes cast for the Union, 52 votes cast against the Union, and seven challenged ballots. The challenges were not sufficient in number to affect the results of the election.

The tally of ballots for the Hampton Inn showed that 20 votes were cast for the Union, 17 votes against, and two challenged ballots. The challenges were not sufficient in number to affect the results of the election.

On August 20, 2004, the Employers filed timely objections to the conduct of the elections. On March 23, 2005, the Regional Director issued a Report on Objections. In this report, he dismissed some of the Employers' objections and ordered that some of them be sent to a hearing.

To the extent that the Regional Director did not dismiss the Employers' Objections, the allegations set for hearing are as follows:¹

1. That during the critical period, the Union by Terri Harkin, Sadatu Dawoud, and other agents, subjected employees to repeated verbal abuse including profanity, racial and sexual slurs, threats of physical harm, and degrading insults. (Objections 1 and 3(i) and 6)).

2. That during the critical period, the Union by Terri Harkin, Sadatu Dawoud, and other agents, appealed to the racial, ethnic and religious prejudices of the employees by making anti-Semitic remarks about the owner of the hotel. (Objections 1 and 3(ii)).

3. That during the critical period, the Union by its agents, told employees of both hotels that if they did not sign union authorization cards or otherwise support the Union, they would be fired if the Union won the election and that the Union would not protect them. (Objections 2 and 7).

4. That during the critical period, the Union by its agents, pressured employees to sign a second union petition by threatening employees who refused to sign this petition that it would show the employer the first petition signed by such employees. (Objection 4).

5. That during the critical period, the Union by its agents, interfered with the election by (a) photographing employees; (b) disseminating slanderous rumors that employees who did not support the Union were accepting bribes from the Employer; (c) calling them repeatedly to solicit their support; (d) appearing at their homes and refusing to leave; and (e) subjecting employees to repeated verbal abuse, including racial and sexual epithets, etc. (Objections 3(ii) through 3(vi)).

6. That the Union created false propaganda by forging or otherwise improperly using employee signatures on union leaflets and flyers. (Objection 5(ii))

7. That during the voting, union agents accompanied employees into the voting room and chanted "Union, Union." (Objection 11).

Based on the entire record, including my observations of the demeanor of the witnesses and after considering the arguments of counsel,² I hereby make the following

¹ The Regional Director overruled Objections 5(i), 6, 7, 8, 9, 10, 12, and 13.

FINDINGS AND CONCLUSIONS

I note that the Hearing on Objections was originally consolidated with the trial of an unfair labor practice complaint against the Union in Case 29-CB-12646. But because the Union agreed to settle that matter before the trial opened, the Objections were, in effect, severed from that unfair labor practice case.

I also note that the Union had also filed a series of charges against the two Employers. On January 11, 2005, the Regional Director issued a complaint involving alleged unfair labor practices at the Hampton Inn and on January 19, 2005, he issued a consolidated complaint involving alleged unfair labor practices against the employees at the Holiday Inn. These unfair labor practice charges included, *inter alia*, allegations that the Employers had illegally suspended and discharged employees; illegally promised benefits in order to dissuade employees from voting for the Union; illegally prevented employees from wearing union badges in nonwork areas; and illegally prevented employees from distributing union leaflets during nonwork time in nonworking areas.

The unfair labor practice complaints were not consolidated with the hearing on Objections. However, it was arranged that the various cases be heard in *seriatim* so that the issues could be dealt with in an efficient and expeditious manner. I therefore opened the hearing on Objections immediately upon the close of the trial involving the unfair labor practice allegations. As such, I shall take official notice of the record in the CA cases and vice versa.

The Employer offered no evidence in support of its Objections 4, 11, and portions of Objection 5. I therefore shall recommend that those allegations be overruled.

At the outset, I would like to point out that both sides ran vigorous campaigns. Somewhat unusually, the Company essentially started its own campaign even before the Union started its organizing efforts at the JFK hotels. It did so when it hired a "union avoidance" consultant to talk to employees and find out what their concerns and complaints were. This was explicitly done because the Company, having just experienced an organizing campaign at its Crowne Plaza hotel at LaGuardia Airport, anticipated that the Union would soon start to organize the employees at its two JFK hotels. Indeed, once having found out what those complaints were, the Company decided to address those complaints and promised to fix them. It did so at a meeting held with employees at the two JFK hotels on May 25, 2004. This meeting occurred only 5 days after union representatives started meeting with the employees.

The Union conducted its campaign through a series of 19 meetings. These were held one or two times per week from May 20 to the elections which were held on August 12 and 13. It also had an organizing committee consisting of about 15 activist employees who solicited support and distributed written literature to other employees.

² Notwithstanding the objection by the Petitioner's Counsel I have received and read the Employer's Brief. The Employer's counsel notified me that his computer system had suffered a problem and this caused the short delay.

The Union's written literature stressed the ideas that having union representation would mean that the Employer would not be able to take arbitrary disciplinary action against employees; that it could mean higher pay and benefits; and that it would force the Employer to have respect for the employees. The Union's literature warned that management might try to intimidate employees or buy them off with promises. Employees were told that management had hired lawyers and consultants in order to prevent employees from being paid benefits and wages consistent with other hotels having union contracts.

The Union also drafted and solicited employee signatures on various petitions calling for the reinstatement of certain employees whom the Union alleged were unfairly suspended or discharged.

In all of the Union's written literature or petitions, there were absolutely no statements indicating that the Union was, in any way, appealing to racial, ethnic or religious feelings. And there were no statements, except one relating to Elizabeth Carbonara that actually referred to any management officials by name. In the case of Carbonara, there was one leaflet with a picture of her taking a photograph from her car and accusing her of illegal intimidation. None of the other leaflets mentioned Mr. Fields by name, or any of the other management officials by name.

The Employer ran an equally vigorous campaign that entailed the hiring of outside consultants who met with employees on numerous occasions between May 25 and the August elections. The Employer distributed many leaflets to its employees that stated in substance, that the Union could not make any guarantees to the employees; that the Union would cost employees considerable amounts of money in dues, initiation fees and assessments; that employees might be compelled to become members of the Union or lose their jobs if the Union won the election; that employees might be called upon to engage in a strike for which they could be permanently replaced; that a union could legally fine or punish union members for not going along with union rules; that other hotels which had been unionized had closed or been sold; and that other hotels where a union won an election, had never signed a collective bargaining agreement.

Further, it was alleged, in the related CA cases, that the Employer's campaign included certain illegal conduct such as illegal promises of benefits designed to induce employees to refrain from supporting the Union and illegal discharges of certain union supporters. I will issue decisions in those cases as soon as possible.

The Employer and the Union presented witnesses who testified about a number of verbal transactions that occurred during the election campaign. Many of these alleged transactions occurred during union meetings, while others occurred either on the street or in the hotels. As this campaign took place over a period of more than 2 months and as both sides held a large number of meetings, supplemented by many written flyers, it struck me that there was a high degree of probability that the people who testified were likely to have conflated what happened at the various meetings. Indeed, I am convinced that at times, witnesses even confused what was said at union meetings with what was said at a meeting where management spoke to the employees. In this context, I am convinced that some of

these witnesses likely misunderstood or misremembered what they were hearing. For example, some witnesses stated that they were told that if the Union won the election they would be fired. I think that such a statement was never said by any union representatives, although it is possible that employees who heard or read management statements might have come to the conclusion that if the Union won the election and engaged in a strike, the Company would permanently replace them.

I will also note that I was impressed by the demeanor of the Union's chief organizer, Terri Harkin. I thought that Harkin had a good memory, that she was candid in her replies and that she listened carefully and gave thoughtful answers to Counsel for both parties. I also was impressed by the demeanor of Sadatu Dawoud.³

Veronica Lemonius was called as a witness by the Employer and testified that sometime in May 2004, she heard from her friends, Pauline Burnett and Carlene Whitney that a union was coming and that the Union's organizer was a person named Terri. She testified that Terri Harkin called her at home about five or six times to let her know of union meetings and she states that during one or more of these phone conversations, Terri said that she wanted Lemonius to be a part of the union because, "you will get benefits and Mr. Fields is a Jew and a wicked man and he will crush you like an ant and if you don't come out and sign a union card, you will be fired." Lemonius testified that Terri Harkin repeated these comments whenever she called. She further testified that her friends, Carlene and Paulette told her that Terri had made these same remarks at union meetings which they attended. If Lemonius is talking about Paulette Walker, instead of Pauline Burnett, then she is talking about a person who is deceased and obviously can't corroborate this assertion.

When pressed to state when Terri Harkin made these phone calls, Lemonius testified that the first conversation occurred on or about May 17, 2 days before her son's birthday. As far as union meetings, Lemonius testified that she went with Carlene Whitney to just one meeting at the Radisson Hotel in July 2004, where she signed a union card. (The Union's sign-in sheet for May 27 is signed by Lemonius and Carlene Whitney. Moreover, almost all of the cards were signed by employees from May 26 to May 28). Despite signing a card, Lemonius testified that she was not interested in the Union and that is why she did not attend any of the other union meetings.

There were no other employees who testified that they received phone calls from Terri Harkin or any other union representatives where these types of comments were made. Moreover, the union campaign did not really start until May 20, 2004 and the Union did not start to contact employees until after that date. (Except for a few who had unsuccessfully been involved in an aborted attempt in 2002.) Assuming *arguendo*, that Harkin made these statements to Lemonius either during a phone call on May 17 or at a meeting on May 27, then they were made before the petitions were filed.

³ Because most of the witnesses referred to people by their first names I am also going to use first names when describing some events. I hope that no one will think that I mean any disrespect by this.

Denise Miles, a witness called by the Employer, testified that the first union meeting that she attended was on the second floor of the Radisson Hotel. She also testified that she attended a second meeting about a week later. Miles testified that at the first meeting, Terri Harkin and Sadatu Dawoud spoke and told employees that they were going to give out union cards and that the employees were supposed to wear their union badges, (which had the employee's names and photos on them), in the cafeteria and that if a supervisor said something, the employees should show their union badges. Miles testified that Terri said that she needed the employees to work together to get a union in the hotel "because we are dealing with Mr. Fields and he is a wicked Jew and he will crush us like ants." According to Miles, Harkin made this statement after Carlene Whitney asked if the Union was going to give the employees free health benefits. Miles testified that a coworker named Lela Molina, (since deceased), also said that Mr. Fields was a cheap Jew. Miles recalled that Terri said at the second meeting something to the effect that the employees needed to sign a union card so that the Union could give them protection from being fired by Mr. Field. In the same vein, she testified that Terri said that if the employees didn't sign a card, they would be fired because they wouldn't have union protection. After leading questions, Miles stated that Terri said that employees would be fired after the voting when the Union won the election. (This actually makes no sense unless Miles is conflating statements made by union representatives with statements made by the Employer to the effect that if the Union engaged in a strike, the strikers would be replaced).

Miles could not recall when she attended these union meetings, but from the exhibits it seems that she attended a meeting on June 24 as her name appears on the union's sign-in sheet for that date.

Miles testified that about a week after the second meeting she asked Sadatu for her card back and that Sadatu resisted. Miles testified that said that she had to take care of her family and what the Union was offering, she couldn't afford.

According to Miles, she told her coworkers that she was against the Union and this resulted in some employees not liking her. At some point after the election, Miles was promoted to a job in the office doing accounts payable work and was no longer in the bargaining unit. She and Carlene Whitney had come to the United States at the same time and were friends before their employment at the hotel.

Carlene Whitney, a witness called by the Employer, testified that she and Veronica Lemonius went to a meeting at the Radisson Hotel in late May 2004. (P. Exh. 1 is a sign-in sheet for May 27 and was signed by Lemonius and Carlene Whitney.). Whitney testified that she thereafter attended about four of five meetings. (The exhibits show her name on the sign-in sheets for May 26, 27, June 1, 17, and 29).

According to Whitney, at the first meeting that she attended, (and which was before any petition was filed), Terri, Sadatu, and two male organizers gave speeches. She testified that Terri said that the employees had to sign a paper because it was like a safety net protection from being fired. According to Whitney, Terri said that the employees had to get their pictures taken for a badge because if they didn't do that, they could lose their jobs

and that, "Mr. Field is a cheap Jew and he will crush us like ants." Whitney went on to testify that Terri said that if the employees didn't sign the "solidarity cards" they would lose their jobs and that the union badges were supposed to serve as protection from being fired. She testified that Terri said that Mr. Field would fire the employees if the Union came in and that he was a "serpent."

Carlene Whitney testified that at the second meeting that she attended, Terri told the employees that they should wear their union badges and union t-shirts. At the third meeting, according to Whitney, Terri told her that if she wanted to come out of the Union she would be fired by management.

Carlene Whitney testified that on an occasion in August 2004, and before the election, she, Lemonius, and Miles were walking from the bus stop when an organizer named Tony said that she had betrayed her coworkers and that he called her a \$3 whore. (She is referring to a union organizer whose name is Otoniel Figueroa). As to this alleged incident, Lemonius recalled an occasion when they got off the bus and a young man said to Carlene that she was a \$3 whore. However, Denise Miles recalled an incident at the bus stop but indicated that it took place after the election and after the strike had started. (These three employees exercised their right to not participate in the Union's strike which started in September 2004).

Finally, Carlene Whitney testified that on about three occasions in mid and late July, Sadatu said to her that she was a traitor; that she was selling out her coworkers; and that she was a "house nigger." This was denied by Sadatu.

Pauline Burnett, a witness called by the Employer testified that one day around July 24, she and Paulette Walker, (now deceased), were leaving work in her car when a short male union organizer, who was outside the gate with some of the employees and another tall male organizer, asked her if she was Jamaican. She testified that when she said yes, he responded; "and you in there fighting for that Jew. Girl, why don't you come out here and join us."

Burnett testified that she was not clear as to whether she attended any of the union meetings or even if she attended any of the management meetings where the election was discussed. Petitioner Exhibit 2, which is a sign-in sheet for Saturday May 22, 2004, has Burnett's signature on it. (That was a very early meeting and probably one of the informal gatherings held in the bar/lobby area of the Radisson Hotel). I note that Burnett, at the time of the election, was employed as a housekeeper and a part-time supervisor.

Ann White, a witness called by the Employer testified that in late May 2004, she went to the Radisson Hotel with Lemonius and Whitney, where she met with Terri Harkin who said that she was there to recruit employees for the Union. By her description of this event, which she described as taking place in the bar area, it is clear that this meeting was held before the first petition was filed. With respect to the meeting, White testified that Terri told employees that the Union would protect them and that if she didn't sign a card, by the time the Union got in the hotel, she would be fired. When asked to elaborate, White testified that Terri said that if she didn't sign the card, there was no way that the Union could protect her and that she

would be fired when the union came into the hotel. White testified that she signed a union card at this meeting.

According to White, she attended a number of other union meetings in June. (According to Petitioner's Exhibit 4, White attended, along with Carlene Whitney, the union meetings held on June 1 and 17.) White did not, however, corroborate any of the alleged anti-Semitic statements made by union representatives either at the May bar meeting or at the two other meetings that she attended in June 2004. In this regard, although it seems that she attended at least three meetings with Carlene Whitney, she did not corroborate Whitney's testimony. She asserted that she left before the meetings were over but acknowledged that she was present for about an hour.

Although a room attendant in the summer of 2004, White, about 3 weeks before the hearing, was reassigned to an office position.

Another witness called by the Employer was Yvonne Joseph. She testified that she went to two meetings at the Radisson Hotel, the first of which was held in May and the second in June. However, Petitioner's Exhibit 4 indicates that Joseph attended meetings on May 21 and May 26, 2004. Petitioner's Exhibit 3 has her signature on a petition that was signed by various employees at meetings held on May 26, 27, and 28. Accordingly, if she attended only two meetings and if those meetings were held on May 21 and 26, then all of her testimony, even if credited, would relate to statements made by union representatives before any petition was filed.

Nevertheless, I will describe her testimony. According to Joseph, it was either at the first or second meeting that Terri, Sadatu and a tall, good-looking Spanish man spoke to the employees. She testified that Terri said that the employees had to get together and be strong and that management "was going to tell you a lot of stuff and had a lot of dark secrets." Ms. Joseph testified that Terri's message was that "[W]e have to vote for the union."

Ms. Joseph testified that at the same meeting, the Spanish man said that Mr. Field was a wicked man; that the employees were underpaid; that we had to take what we can get from him; and that he was a serpent. When asked if she recalled anything else that was said, Ms. Joseph said no. When she was then asked if Mr. Fields was called any names, she remembered that he was called an ant. "He's a wicked man. That man is an ant." "He said that man is a wicked man, we have to take what we can get from him. He's a wicked man." At this point in her testimony, Ms. Joseph was asked if anything else was said about Mr. Fields and she again said no. But leading questions sometimes help.

Q. Do you recall anything else that he said about Mr. Field?

A. No, no

Q. Did he make any comment about Mr. Field's religion?

A. Yes, Yes.

...

By Mr. Hoffman

Q. What did he call —

A. He said that Jew man is, that Jewish man is a wicked man, he's a wicked serpent. That's what he said.

...

A. I heard it about three, four times in the meeting, the same day.

Q. And who did, when you heard it, who was saying it?

A. This tall Spanish guy and Terri both.

Q. What did you hear Terri say?

A. Terri? Terri was, Terri, that man is a wicked serpent. He is an ant. He's going to crush you people. You have to do what you have to do. The Union is the right way for you. Go with the union. Management is wicked. Then she constantly asking us about our supervisors and what management was telling us.

According to Ms. Joseph, she attended a second meeting about a week later where Terri, Sadatu, and the Spanish man again spoke to employees. Her testimony was that Terri called Mr. Fields a wicked man who was out to get you and that management was going to say all kinds of things to get the employees to change their minds about the Union. She testified that at this meeting, the Spanish man said that Mr. Field was a wicked Jewish man; that he is a serpent; and that we all had to stand up together.

Ms. Joseph also testified that at this same meeting, Sadatu spoke to employees and told them that management was going to "fire you girls." She asserts that Sadatu said that if the employees didn't vote for the Union they were going to get fired. According to Ms. Joseph, Sadatu came over to her and said that they were both black, that management was white and that they were out to get you people. She testified that it was at this time that she signed her name on a union card and this leads me to believe that she is confused about her dates and that this transaction, if it happened at all, probably took place in May and before any petition was filed.

Ms. Joseph's final bit of testimony involved an incident that allegedly took place on August 12, 2004. She testified that on the day before the election at the Hampton Inn, she and another employee named Yvonne Hill were approached by Sadatu who told her that the Union had already won the election at the Holiday Inn and asked her what she was going to do and if she was going to vote tomorrow. (The votes at both elections were counted on August 13). Ms. Joseph testified that when she replied that she didn't know, Sadatu said that she should look at what management was doing to the employees; that she had to be on the union side and vote for the union and "besides, he's going to fire you when the union came in." This uncorroborated testimony was credibly denied by Sadatu.

Gloria Parker, another witness called by the Employer, testified about an occasion when she was visited at her home by Terri, Sadatu and employee Maria Pineros. The basic point of this testimony was that these people tried to convince her to join the Union but that after overstaying their welcome and being asked to leave, they refused to go. She testified that her daughter then called the police whereupon the union people finally left her premises. She testified that this occurred some time in May or June 2004.

The Union's witnesses basically concede that Ms. Barker's description of the visit was accurate as to what took place. However, they credibly testified that this meeting took place in 2002 or 2003, when the Union made an abortive attempt to organize these employees.

The Union called a series of witnesses including Terri Harken, Sadatu Dawoud, Sandra Benton, Aurea Rivera, Maria Pineros, and Shubin Chowdry.⁴ These people all described the various union meetings that they attended and uniformly denied that union representatives made any anti-Semitic remarks. They denied that Mr. Fields was called a cheap Jew, or that he was called a serpent, or that the employees were told that Mr. Fields would crush them like ants. (Or that he was an ant who would crush them). Terri Harken admits that she did refer to Mr. Fields on occasion and that she probably said that he was cheap.

On the record as a whole and considering the testimony and demeanor of the various witnesses, I am going to credit the Union's witnesses and hold that the alleged anti-Semitic statements were not made. Therefore, I do not find that the Union's agents referred to Mr. Fields as being Jewish or being a Jew or being a cheap Jew. Indeed, it began to look to me like this story was one that was made up by someone and was poorly rehearsed by a small clique of nonrandomly selected witnesses.

I am also going to find that the Employer has not shown, by a preponderance of credible evidence, that union agents made racial slurs against employees or that they attempted to use racial or ethnic appeals in order to gain votes. In this regard, I shall credit the testimony of Sadatu and other union witnesses who denied that such statements were made.⁵ Nor shall I credit the testimony that Sadatu called Carlene Whitney a house nigger or that another union agent called her a \$3 whore.

There is no question but that union representatives told employees that if they organized, there was a possibility that the Employer might retaliate against them and that this might include discharges. The evidence, including statements made by the Employer's witnesses, indicates to me that union representatives told employees that by openly displaying pronoun badges this would help the Union protect them from being discharged because it would therefore be possible for the Union to demonstrate that the Employer had knowledge of the employees' union activities.

⁴ The Union also presented Shuhab Ahmed as a witness but I excused him because I couldn't understand what he said. I notified the Union's counsel that she could call this witness if a translator was provided.

⁵ Sadatu Dawoud testified that after Pauline Burnett told her that she did not want the Union anymore, Burnett made threatening and obscene comments to her on various occasions outside of the hotel. This testimony was not rebutted by Burnett.

It is also indisputable that the Employer, through its campaign literature, told employees that in the event that the Union won the elections, the Union might call a strike whereupon the Employer had the right to replace the strikers. Therefore, it is my belief that statements made by the Employer's witness attributing the possibility of employees being discharged after the Union won the elections are, in fact, not statements made by union representatives at all.

Accordingly, I am going to credit the Union's witnesses and hold that the evidence fails to establish that union representatives threatened employees with discharge or other reprisals.

There was testimony that union representatives took photographs of employees. But in virtually every instance, the Union took pictures with employees' consent and these were used either to make up union badges or in order to have employees' pictures in the Union's campaign flyers.⁶ There was virtually no credible evidence that any bargaining unit employees were photographed without their permission. Nor was there any evidence indicating that the taking of pictures was designed by the Union to engage in surveillance.⁷

In sum, I conclude that the evidence presented by the Employer was insufficient to support its Objections to the elections.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER

The Objections are overruled and the representation cases in 29-RC-10237 and 29-RC-10238 should be remanded to the Regional Director of Region 29, for the purpose of issuing the appropriate Certifications.⁸

Dated, Washington, D.C. June 22, 2005

⁶ Examining the flyers does not reveal any reluctant posers.

⁷ Mark Monroe, a witness called by the Employer, testified that on one occasion in mid-June, 2004, he was walking from the bus stop when the union organizer named Otoniel came up behind him and took pictures of him. Monroe is a human resources assistant and was not in the voting unit.

⁸ Any party may, within fourteen (14) days from the date of issuance of this recommended Decision, file with the Board in Washington, DC, and original and eight (8) copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the Regional Director of Region 29. If no exceptions are filed, the Board will adopt the recommendations set forth herein.